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10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN JOSE DIVISION

13 ARNOLD WANDEL, individually and on )  
14 behalf of all others similarly situated, )

15 Plaintiff, )

16 v. )

17 HERBERT W. BOYER, Ph.D., WILLIAM )  
18 M. BURNS, ERICH HUNZIKER, Ph.D., )  
19 JONATHAN K.C. KNOWLES, Ph.D., )  
20 ARTHUR D. LEVINSON, Ph.D., DEBRA )  
21 L. REED, CHARLES A. SANDERS, M.D., )  
22 GENENTECH, INC., and ROCHE )  
23 HOLDING AG, )

24 Defendants. )

**STOCKHOLDER'S CLASS  
ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff Arnold Wandel, by his attorneys, alleges upon information and belief (said  
2 information and belief being based, in part, upon the investigation conducted by and through  
3 undersigned counsel), except with respect to plaintiff's ownership of Genentech, Inc.  
4 ("Genentech" or the "Company") common stock, and plaintiff's suitability to serve as class  
5 representative, which is alleged upon personal knowledge, as follows:

6 **NATURE OF THE ACTION**

7 1. Plaintiff brings this action individually and as a class action on behalf of all  
8 persons, other than defendants, who own the securities of Genentech and who are similarly  
9 situated, seeking compensatory damages and injunctive relief arising from the proposed  
10 transaction described below (the "Class"). Alternatively, in the event that the proposed transaction  
11 is consummated, plaintiff seeks to recover damages caused by the breach of fiduciary duties owed  
12 by the Director Defendants (as defined below). The proposed transaction and the acts of the  
13 Director Defendants, as more particularly alleged herein, constitute a breach of defendants'  
14 fiduciary duties to plaintiff and the Class and a violation of applicable legal standards governing  
15 the defendants herein.

16 2. This action arises from breaches of fiduciary duties in connection with a proposal  
17 by Roche Holding AG ("Roche"), a subsidiary of F. Hoffmann-La Roche Ltd, the world's largest  
18 producer of medications to treat cancer and leader in the field of molecular diagnostics, to buy all  
19 outstanding shares of Genentech, a company on the cutting edge of gene-based therapies. Roche  
20 is the majority shareholder of Genentech, having acquired approximately 56 percent of the  
21 Company's outstanding stock in the early 1990s, and on July 21, 2008 announced an offer to buy  
22 the remaining outstanding shares of Genentech for \$89 per share in cash (the "Proposed  
23 Transaction"). This represents a total equity value of approximately \$43.7 billion.

24 3. As the negative market reaction to the offer reflects, *see infra* ¶¶42-51, the  
25 consideration offered in the Proposed Transaction is grossly inadequate. Indeed, the Proposed  
26 Transaction consideration represents a paltry 8.8 percent premium to Genentech's share price for  
27 the previous market day. This is even more striking since the *average premium* in similar recent  
28 transactions is approximately 63 percent. As noted above, Roche owns approximately 56% of

1 Genentech and has nominated three of its current directors. As a controlling shareholder Roche  
2 exerts considerable influence and/or control over the Genentech Board and therefore owes  
3 Genentech public shareholders a duty of entire fairness with respect to price and process when  
4 offering to acquire the remainder of the company.

5 4. Defendants have publicly stated that they intend to consider the Roche proposal,  
6 suggesting that the offer will likely be accepted. This would essentially make the Proposed  
7 Transaction a *fait accompli*, due to Roche's influence and control over the Board as well an  
8 agreement between Roche and Genentech which allows a non-Roche shareholder vote in  
9 opposition to a proposed transaction to be overridden by the decision of a pair of investment  
10 bankers. *See infra* ¶¶55-56. Plaintiff alleges that he and the other public shareholders of  
11 Genentech common stock are entitled to enjoin the Proposed Transaction or, alternatively, to  
12 recover damages in the event that the Proposed Transaction is consummated. The Proposed  
13 Transaction does not provide for adequate value for Genentech shareholders. Under the  
14 circumstances and facts of the Proposed Transaction, the decision of the Director Defendants (as  
15 defined below), who constitute Genentech's board of directors, to consider the proposed  
16 transaction, rather than immediately reject it, constitutes a sham and breach of their fiduciary  
17 duties to plaintiff and other Genentech shareholders.

#### 18 JURISDICTION AND VENUE

19 5. This Court has jurisdiction pursuant to 28 U.S.C. §1332(a)(2) in that plaintiff and  
20 defendants are citizens of different states and the matter in controversy exceeds the jurisdictional  
21 amount of \$75,000, exclusive of interest and costs. In addition, this court has supplemental  
22 jurisdiction under 28 U.S.C. §1367(a). This action is not a collusive action designed to confer  
23 jurisdiction on a court of the United States that it would not otherwise have.

24 6. Venue is proper in this District pursuant to 28 U.S.C. §1391(a)(2) because  
25 Defendant Genentech is headquartered in this District and a substantial portion of the transaction  
26 and occurrences complained of herein, including the Defendant's primary participation in the  
27 wrongful acts detailed herein, occurred in this District. In addition, one or more of the defendants  
28 either resides in or maintains executive offices in this district.

**PARTIES**

7. Plaintiff Arnold Wandel, resident of the state of New York, has been an owner of shares of defendant Genentech common stock at all relevant times described herein.

8. Defendant Genentech is a Delaware corporation headquartered at 1 DNA Way, South San Francisco, California 94080-4990. Genentech is a leading biotechnology company that discovers, develops, manufactures, and commercializes pharmaceutical products to treat patients with significant unmet medical needs. The Company commercializes multiple biotechnology products and also receives royalties from companies that are licensed to market products based on its technology.

9. Under Genentech's bylaws, Roche is entitled to representation on the Company's Board proportional to its ownership interest in Genentech. Roche is entitled to have a number of directors equal to its percentage ownership times the total number of directors, rounded up to the next whole number if Roche's ownership interest is greater than 50% and rounded down if it is less than or equal to 50%.

10. Defendant Roche, a subsidiary of F. Hoffmann-La Roche Ltd, is headquartered at Grenzacherstrasse 124, CH-4070, Basel, Switzerland 4002. Roche produces pharmaceuticals, vitamins, fine chemicals, diagnostic products, fragrances, and flavors. Its pharmaceuticals, which account for the majority of the company's total sales, treat infectious, cardiovascular, inflammatory, and autoimmune diseases, among others. Its Rocephin ranks as the best-selling injectable antibiotic worldwide.

11. Defendant Herbert W. Boyer, Ph.D. is the retired co-founder of Genentech and Professor Emeritus of Biochemistry and Biophysics at University of California at San Francisco. He has served as a director of the Company since 1976.

12. Defendant William M. Burns is Chief Executive Officer of the Pharmaceuticals Division and Member of the Corporate Executive Committee, The Roche Group. He has served as a director of the Company since 2004. Pursuant to the affiliation agreement between Genentech and Roche, Mr. Burns is a designee of Roche. He is not an independent director.

1           13. Defendant Erich Hunziker, Ph.D. is Chief Financial Officer and Deputy Head of  
2 the Corporate Executive Committee, The Roche Group. He has served as a director of the  
3 Company since 2004. Pursuant to the affiliation agreement between Genentech and Roche,  
4 Dr. Hunziker is a designee of Roche. He is not an independent director.

5           14. Defendant Jonathan K.C. Knowles, Ph.D., is head of Global Research and Member  
6 of the Corporate Executive Committee, The Roche Group. He has served as a director of the  
7 Company since 1998. Pursuant to the affiliation agreement between Genentech and Roche,  
8 Dr. Knowles is a designee of Roche. He is not an independent director.

9           15. Defendant Arthur D. Levinson, Ph.D., is Chairman and Chief Executive Officer of  
10 Genentech. He has served as a director of the Company since 1995.

11           16. Defendant Debra L. Reed is President and Chief Executive Officer of San Diego  
12 Gas & Electric and Southern California Gas Co. She has served as director of the Company since  
13 2005.

14           17. Defendant Charles A. Sanders, M.D., is retired Chairman and Chief Executive  
15 Officer of Glaxo, Inc. and serves as Lead Director of Genentech. He has served as a director of  
16 the Company since 1999.

17           18. The individual directors of Genentech described in paragraphs 11 to 17 are  
18 collectively referred to herein as the "Director Defendants."

19           19. The Director Defendants owe fiduciary duties including good faith, loyalty, fair  
20 dealing, due care, and candor, to Genentech and its shareholders.

21           20. The Director Defendants, by reason of their corporate directorships and/or  
22 executive positions, are fiduciaries to and for the Company's stockholders, which fiduciary  
23 relationship requires them to exercise their best judgment, and to act in a prudent manner and in  
24 the best interests of the Company's stockholders.

25           21. Each Director Defendant herein is sued individually, as a conspirator and aider and  
26 abettor, as well as in their capacity as an officer and/or director of the Company, and the liability  
27 of each arises from the fact that he or she has engaged in all or part of the unlawful acts, plans,  
28 schemes, or transactions complained of herein.

**CLASS ACTION ALLEGATIONS**

22. Plaintiff brings this action individually and as a class action on behalf of all persons, other than defendants, who own the securities of Genentech and who are similarly situated for compensatory damages and injunctive relief arising from the Proposed Transaction described below.

23. This action is properly maintainable as a class action for the following reasons:

a. The Class of shareholders for whose benefit this action is brought is so numerous that joinder of all Class members is impracticable. According to the Form 10-Q the Company filed with the SEC on May 7, 2008, there were 1,050,891,782 shares of the registrant's common stock outstanding as of April 30, 2008. Upon information and belief, Genentech common stock is owned by thousands of shareholders of record scattered throughout the United States.

b. A class action is superior to other methods for the fair and efficient adjudication of the claims asserted herein, and no unusual difficulties are likely to be encountered in the management of this action as a class action. The likelihood of individual Class members prosecuting separate claims is remote.

c. There are questions of law and fact which are common to members of the Class and which predominate over any questions affecting any individual members. The common questions include, *inter alia*, the following:

i. Whether one or more of the defendants has engaged in a plan and scheme to enrich themselves at the expense of Genentech public stockholders;

ii. Whether the Director Defendants have breached their fiduciary duties owed by them to plaintiff and members of the Class, and/or have aided and abetted in such breach, by virtue of their participation and/or acquiescence and by their other conduct complained of herein;

iii. Whether defendants have failed to fully disclose the true value of Genentech assets and earning power and the future financial benefits which Roche will obtain from the completion of the Proposed Transaction;

1                   iv.     Whether the Director Defendants have wrongfully failed and refused  
2 to seek a purchase of Genentech at the highest possible price and, instead, have sought to chill  
3 potential offers and allow the valuable assets of Genentech to be acquired by Roche at an unfair  
4 and inadequate price;

5                   v.     Whether Roche has induced or aided and abetted breaches of  
6 fiduciary duty by members of Genentech's board of directors, especially Director Defendants  
7 Burns, Hunziker and Knowles;

8                   vi.    Whether plaintiff and the other members of the Class will be  
9 irreparably damaged by the Proposed Transaction; and

10                  vii.   Whether defendants have breached or aided and abetted the breaches  
11 of the fiduciary and other common law duties owed by them to plaintiff and the other members of  
12 the Class.

13           24.     Plaintiff is committed to prosecuting this action and has retained competent counsel  
14 experienced in litigation of this nature. Plaintiff's claims are typical of the other members of the  
15 Class and plaintiff has the same interest as the other members of the Class. Accordingly, plaintiff  
16 is an adequate representative of the Class and will fairly and adequately protect the interests of the  
17 Class.

18           25.     Plaintiff anticipates that there will not be any difficulty in the management of this  
19 litigation.

20           26.     For the reasons stated herein, a class action is superior to other available methods  
21 for the fair and efficient adjudication of this action.

22                                   **SUBSTANTIVE ALLEGATIONS**

23                   ***Background to the Proposed Transaction***

24           27.     In the early 1990s, Swiss pharmaceutical company Roche purchased a controlling  
25 stake in Genentech. As of July 21, 2008, Roche owned 56% of Genentech, representing an equity  
26 market value of nearly \$86 billion.

27           28.     The investment by Roche in Genentech was widely considered one of the best  
28 strategic investments in the drug industry's recent history.



1           29. According to the July 21, 2008, online edition of *The Wall Street Journal*, “[i]t  
2 gave Genentech the wherewithal to finance its drug-development program without worrying about  
3 disappointing Wall Street analysts and fickle investors with erratic quarterly earnings. For Roche,  
4 it offered a promising pipeline of drugs in development and control of one of the leaders in the  
5 genetics and biotechnology revolutions.”<sup>1</sup>

6           30. Roche left Genentech to be run as a separate entity, because it reportedly did not  
7 want to interfere with the “innovative spirit that had made the smaller company such a promising  
8 catch. That arms-length relationship has paid off for both parties.” *Id.*

9           31. Nevertheless, Roche is now very dependent on Genentech's stable of proven and  
10 safe cancer drugs for both revenues and profits. Indeed, “drugs developed by Genentech  
11 contributed nearly a third of Roche's total sales of 46.1 billion Swiss francs, or about \$45 billion,  
12 in 2007.” *Id.* Roche already consolidates Genentech's sales in its profit-and-loss statements.

13           32. Many of Genentech's products enjoy little to no competition and this near  
14 monopoly status allows the Company to charge very high prices and garner extremely high profits.

15           33. The years subsequent to Roche's investment in Genentech have seen Genentech  
16 bring to market important medicines earning it sales of more than \$1 billion a year. These drugs  
17 include Avastin®, Rituxan® and Herceptin® for the treatment of various forms of cancer. 2007  
18 sales of Avastin® and Rituxan® both topped \$2 billion world-wide. As part of the two  
19 companies' arrangement, Genentech sells the drugs inside the U.S. and Roche outside the U.S. *Id.*

20           The Company's prior two earnings results have been extremely strong. For example, the  
21 Company's first quarter 2008 results demonstrated strong sales, especially for Avastin®,  
22 Rituxan®, and Herceptin®:

23  
24  
25  
26  
27 <sup>1</sup> See [http://online.wsj.com/article/SB121661650573769807.html?mod=hps\\_us\\_whats\\_news](http://online.wsj.com/article/SB121661650573769807.html?mod=hps_us_whats_news).  
28



**Total Product Sales**  
(In millions)

	<b>Three Months Ended March 31,</b>		<b>% Change</b>
	<b>2008</b>	<b>2007</b>	
Net U.S. product sales			
Avastin <sup>®</sup>	\$ 600	\$ 533	13%
Rituxan <sup>®</sup>	605	535	13
Herceptin <sup>®</sup>	339	311	9
Lucentis <sup>®</sup>	198	211	(6)
Xolair <sup>®</sup>	117	111	5
Tarceva <sup>®</sup>	111	102	9
Nutropin <sup>®</sup> products	84	91	(8)
Thrombolytics <sup>®</sup>	67	68	(1)
Pulmozyme <sup>®</sup>	57	52	10
Raptiva <sup>®</sup>	26	24	8
Total U.S. product sales <sup>(1)</sup>	<u>2,205</u>	<u>2,037</u>	8
Net product sales to collaborators	<u>174</u>	<u>292</u>	(40)
Total product sales	<u>\$ 2,379</u>	<u>\$ 2,329</u>	2

34. As of March 31, 2008, the Company enjoyed substantial assets and nearly no material liabilities:

	<b>March 31, 2008</b>		<b>December 31, 2007</b>	
	<b>Assets</b>	<b>Liabilities</b>	<b>Assets</b>	<b>Liabilities</b>
Cash and cash equivalents	\$ 3,283	\$ -	\$ 2,514	\$ -
Restricted cash	788	-	788	-
Short-term investments	1,574	-	1,461	-
Long-term marketable debt securities	1,785	-	1,674	-
Total fixed income investment portfolio	<u>\$ 7,430</u>	<u>-</u>	<u>\$ 6,437</u>	<u>-</u>
Long-term marketable equity securities	416	-	416	-
Total derivative financial instruments	32	130	30	19
Total	<u>\$ 7,878</u>	<u>\$ 130</u>	<u>\$ 6,883</u>	<u>\$ 19</u>

35. More recently, on July 14, 2008, the Company released results for the second quarter 2008. Genentech raised its 2008 forecast as Avastin<sup>®</sup> gained from the new use in the treatment of breast cancer. Genentech had said second-quarter profit rose 4.7% and revenue increased 8% to \$3.2 billion, led by U.S. sales of Avastin<sup>®</sup>.

36. Avastin<sup>®</sup>, first approved in 2004 for colon cancer and for lung malignancies two years later, is being studied against 20 tumor types worldwide. Again, the Company reported

strong sales figures for its signature medications:

	<b>Three Months Ended June 30,</b>		<b>% Change</b>
	<b>2008</b>	<b>2007</b>	
Rituxan®	\$ 651	\$ 582	12%
Avastin®+	650	564	15
Herceptin®	338	329	3
Lucentis®	216	209	3
Xolair®	129	120	8
Tarceva®	119	102	17
Nutropin® Products	89	94	(5)
Thrombolytics®	68	67	1
Pulmozyme®	63	55	15
Raptiva®	28	27	4
Total U.S. product sales <sup>++</sup>	\$ 2,351	\$ 2,149	9
Net product sales to collaborators	185	294	(37)
Total product sales <sup>++</sup>	\$ 2,536	\$ 2,443	4

37. On July 16, 2008, Janney Montgomery Scott LLC (“Janney”) published a research note concerning the Company’s second quarter results and strong prospects for the remainder of 2008. The report noted that the Company’s overall U.S. product sales grew 7% sequentially to \$2.35 billion. Royalty revenue from international product sales was up 29% for the quarter, “again receiving an extra boost from the weak dollar.” Janney wrote:

U.S. *Avastin*® sales increased 15% year-over-year and 8% sequentially, with the renewed “growth coming primarily from increased penetration in the targeted HER2-negative breast cancer arena (35% market share versus 25% prior to the formal label expansion) and a bump up in the first-line NSCLC setting, as well. U.S. *Rituxan*® sales checked in at \$651 million, up and impressive 8% sequentially on stronger use in the rheumatoid arthritis setting.”

38. Janney also reported that *Lucentis*® and *Tarceva*® sales were strong:

*Lucentis*® surprisingly demonstrated some strength, with an increase in its share of new-patient starts (45% vs. 40% previously) resulting in 9% sequential growth to \$216 million.” *Tarceva*® sales also came in above expectations (\$119 million versus our estimate of \$114 million), driven by increased uptake in pancreatic cancer patients and a price increase earlier this year; we note that data from the important, Roche-sponsored SATURN study of *Tarceva*® as a maintenance therapy in the first-line setting is still expected by the

1 end of 2008, as is the BETA-LUND study of the Avastin-Tarceva®  
2 combination in the second-line lung cancer setting.

3 39. Janney also stated that “Avastin Adjuvant “C-08” Study Remains Genentech’s  
4 Most Meaningful Clinical Catalyst Over the Next 12-18 Months; Additional Clinical Catalysts  
5 Coming Into View.” Moreover, Janney reported that Genentech and its partners were moving  
6 forward with critical, new studies:

7 [The Company] continue[s] to proceed with multiple pivotal studies  
8 in the potentially lucrative adjuvant settings with Avastin in  
9 colorectal, lung and breast cancer; as a reminder, the Avastin Phase  
10 III ECOG 1505 study for adjuvant non-small cell lung cancer was  
11 initiated last year (at the “higher” 15 mg/kg dose), while both the  
12 ECOG 5103 and BEATRICE studies in HER2-negative adjuvant  
13 breast cancer commenced in late 2008. During the call, the  
14 company reiterated that the next interim analysis for the C-08 study,  
15 which is evaluating the addition of Avastin to the FOLFOX regimen  
16 in the adjuvant setting in 2,710 colon cancer patients, is set to take  
17 place in the fourth quarter, with final results now due in 2009.

18 ***The Proposed Transaction***

19 40. On July 21, 2008, Roche offered to acquire the remaining portion of U.S. biotech  
20 firm Genentech (that it doesn't already own) for approximately \$43.7 billion, or \$89 a share, in  
21 cash.

22 41. The \$89 per share offer, however, represents a premium of only 8.8 percent to  
23 Genentech's previous closing price of \$81.82 on Friday, July 18, 2008. On news of the Roche  
24 offer, the market reacted by boosting shares of Genentech by almost 15 percent, to \$93.88 at the  
25 close of trading on Monday, July 21, 2008.

26 42. Roche is highly motivated to acquire Genentech. Apart from the Company's strong  
27 stable of well-received and profitable medications, Roche needs to bolster its own flagging profits.  
28 In fact, at the same time it announced the Proposed Transaction, Roche reported that first-half  
profit declined as governments stopped stockpiling Tamiflu, the influenza drug. Roche's shares  
have decreased 8.2% this year. Moreover, the unprecedented weak dollar in comparison to  
European currencies, such as the Eurodollar and Swiss Franc, makes the transaction relatively  
simple to finance from Roche's perspective.

1           43. To give the extremely modest premium represented by the Roche offer context,  
2 recent comparable transactions involving pharmaceutical and biotech companies have averaged  
3 premiums of approximately 63 percent.<sup>2</sup>

4           44. The offer was met by a chorus of analysts who believed \$89 per share  
5 consideration was opportunistic given economic and industry conditions. Oppenheimer & Co.  
6 analyst Bret Holley went so far as to say: "We believe Roche is attempting to capture Genentech's  
7 significant future growth on the cheap."

8           45. In fact, at the close of trading on July 21, 2008, Genentech's share price had risen  
9 almost 15 percent on news of the Roche offer. As Jay Markowitz, a research analyst at T. Rowe  
10 Price Associates (which owns 16.5 million shares of Genentech) stated, that kind of bump in share  
11 price is a message from the market: "I think the market is telling you that they view the offer as an  
12 inadequate reflection of Genentech's value . . . ."<sup>3</sup> Another analyst from Wegelin & Co.  
13 acknowledged that: "The timing looks opportune given the current low U.S. dollar."

14           46. Similarly, Geoffrey Porges of Sanford C. Bernstein reported over CNBC, on July  
15 21, 2008, that the offer was "opportunistic" and the \$89 per share Proposed Transaction was well  
16 below fair value in a change of control context. He stated that that an offer over \$100 was more  
17 reasonable but not necessarily the highest that should be paid. To another media outlet, Reuters,  
18 Porges stated frankly that: "We believe this offer substantially undervalues Genentech."

19           47. Oppenheimer & Co. analyst Bret Holley went so far as to say: "We believe Roche  
20 is attempting to capture Genentech's significant future growth on the cheap."

21           48. Rodman & Renshaw, LLC also issued a report within hours of announcement of  
22 the Proposed Transaction that referred to the \$89 per share price as "laughable" and stated the  
23 following:

24  
25 <sup>2</sup> Cage, Sam, *Roche offers to buy out Genentech for \$43.7 billion*, Reuters (July 21, 2008), available  
26 at <http://biz.yahoo.com/rb/080721/roche.html?.v=10>.

27 <sup>3</sup> Beasley, Deena, *Roche seen likely to raise bid for Genentech*, Reuters (July 21, 2008),  
28 available at [http://biz.yahoo.com/rb/080721/genentech\\_roche.html?.v=1](http://biz.yahoo.com/rb/080721/genentech_roche.html?.v=1).

1 The premium offered to shareholders is, in our opinion, completely  
2 inadequate and unacceptable to DNA shareholders. Recall that we  
3 have derived a DCF-based price target of \$90 DNA, based on what  
4 we consider to be reasonable, perhaps even conservative,  
5 expectations. We remind the reader that we have not included any  
6 of the adjuvant indications for Avastin® into consideration for the  
7 purposes of this analysis. Typically, takeover premiums in this  
8 sector run between 30%-50% (see Table 1). Based on the closing  
9 price of \$81.82, this would place a takeover value on Genentech  
10 shares of between \$106-\$123. We would argue that, given the value  
11 of the Genentech franchise, a premium ought to be at the higher end  
12 of this range in order to be fair to all shareholders.

13 49. The Proposed Transaction provides grossly inadequate consideration for Genentech  
14 shareholders. For example, shares of Genentech traded at almost \$100 per share several years ago,  
15 approximately \$10 per-share above the Proposed Transaction's consideration. In addition,  
16 Genentech shares currently trade at approximately \$93 per share, \$4 per share above the Proposed  
17 Transaction's consideration.

18 50. BMO Capital Markets analyst Jason Zhang criticized the offer in relation to  
19 comparable transactions stating that: "Although there is not a perfect formula for biotech  
20 acquisitions, some of the recent deals pushed the price-to-sales-multiple to 10, exemplified by  
21 AstraZeneca's acquisition of MedImmune." Zhang calculated that a multiple of 10 times revenue  
22 would equate to a price of \$118 per share for Genentech.

23 51. The Roche offer fails to adequately value Genentech's prospects, and represents  
24 nothing more than a keenly timed attempt to squeeze out the Company's public shareholders. If  
25 the Proposed Transaction is consummated at a price which effectively offers Genentech's  
26 shareholder no premium whatsoever, Roche will be able to keep for itself future profits which  
27 rightfully belong to Genentech's shareholders.

28 52. Indeed, while the Proposed Transaction represents no appreciable benefit for  
shareholders, the acquisition will represent a windfall for Roche. Not only will Roche be allowed  
to squeeze out Genentech's public shareholders for a below market price, the Proposed  
Transaction will also generate pretax cost savings of roughly \$750 million to \$850 million  
annually and add considerably to earnings per share in the first year after the deal closes.

1           53. As JPMorgan analyst Geoffrey Meachem stated: “In our view, the  
2 financial/operational synergies are clear.” However, he cautioned temperance stating: “That said,  
3 we believe the offer substantially undervalues Genentech's pipeline, particularly the Avastin®  
4 opportunity for adjuvant colon as well as breast, prostate and [non-small cell lung cancer].”

5           54. In spite of the swift and overwhelmingly negative reaction of both Company  
6 shareholders and analysts, the Company announced that it would consider the Proposed  
7 Transaction.

8           55. Specifically, rather than immediately rejecting the facially inadequate Proposed  
9 Transaction, Genentech announced as follows: “Genentech expects that a special committee of its  
10 Board of Directors, composed of the independent directors, will be convened promptly to  
11 determine what action to take with respect to the proposal.”

12           56. The Company's failure to summarily reject the offer may be rooted in the  
13 Company's admission in its annual report, filed on February 28, 2008, that Roche controls its  
14 operations in many material respects:

15           Roche Holdings, Inc., our controlling stockholder, may seek to  
16 influence our business in a manner that is adverse to us or adverse to  
17 other stockholders who may be unable to prevent actions by Roche  
Holdings, Inc.

18           **As our majority stockholder, RHI controls the outcome of most**  
19 **actions requiring the approval of our stockholders.**

20           Our bylaws provide, among other things, that the composition of our  
21 Board of Directors shall consist of at least three directors designated  
22 by RHI, three independent directors nominated by the Nominations  
23 Committee, and one Genentech executive officer nominated by the  
24 Nominations Committee. Our bylaws also provide that RHI will  
25 have the right to obtain proportional representation on our Board  
26 until such time that RHI owns less than five percent of our stock.  
27 Currently, three of our directors—Mr. William Burns, Dr. Erich  
28 Hunziker, and Dr. Jonathan K. C. Knowles—also serve as officers  
and employees of Roche. As long as RHI owns in excess of 50  
percent of our Common Stock, RHI directors will be two of the  
three members of the Nominations Committee. Our certificate of  
incorporation includes provisions related to competition by RHI  
affiliates with Genentech, offering of corporate opportunities,  
transactions with interested parties, intercompany agreements, and



provisions limiting the liability of specified employees. **We cannot assure that RHI will not seek to influence our business in a manner that is contrary to our goals or strategies or the interests of other stockholders.** Moreover, persons who are directors of Genentech and who are also directors and/or officers of RHI may decline to take action in a manner that might be favorable to us but adverse to RHI.

(Emphasis added).

57. Following the Roche offer, analysts acknowledged the leverage Roche has over Genentech and its Board of Directors. As BMO Capital Markets analyst Jason Zhang noted: “Given that Roche already owns 56 percent of Genentech and it is unlikely any other big pharma company would bid for it, Roche will not have to pay the highest price.” In other words, the Company’s Board will be hard-pressed to exercise an objective analysis given Roche’s position of control and influence over the Genentech Board.

58. In fact, due to the provisions of an agreement made with Roche in connection with the 1990 Genentech initial public offering (“IPO”), the Proposed Transaction is essentially a *fait accompli*. As the IPO registration statement states:

Business Combinations with Roche

Roche has agreed that as a condition to any merger of Genentech with Roche or its affiliates or the sale of substantially all of our assets to Roche or its affiliates, that either

- the merger or sale must be authorized by the favorable vote of a majority of the shares of common stock voting at any meeting not owned by Roche, provided that no person or group shall be entitled to cast more than 5% of the votes cast at the meeting; or

- in the event such a favorable vote is not obtained, the value of the consideration to be received by the holders of our common stock, other than Roche, shall be equal to or greater than the average of the means of the ranges of fair values for the common stock as determined by two investment banks of nationally recognized standing appointed by a committee of independent directors.

Roche has agreed that it will not sell any shares of our common stock in the 90 days immediately preceding any proposal by Roche for a merger with us.



1 Genentech, Inc., Registration Statement (Form S-3), at 63 (June 14, 1999).<sup>4</sup>

2 59. In other words, according to the agreement between Roche and Genentech, the  
3 Proposed Transaction will be consummated regardless of whether a majority of non-Roche  
4 shareholders fail to approve the Proposed Transaction. In the event that shareholders fail to  
5 approve the Proposed Transaction, Roche will simply have the ability to require the Board hire  
6 investment bankers to set the price to be paid for Genentech's remaining shares. However, the  
7 reality of the situation is that, instead of risking a decision by the investment banks to put a lower  
8 price on Genentech's shares than the deal price, Genentech would likely settle for a price within a  
9 few dollars of the deal price. This means that Genentech's public shareholders have very little  
10 chance of receiving more than the proposed inadequate \$89 per share, even if a majority of them  
11 vote against the Proposed Transaction. As Eric Schmidt, a biotech equities analyst for Cowen and  
12 Company stated: "That changes to whole dynamic of the negotiation and lowers by a significant  
13 amount the premium that's going to have to be paid."<sup>5</sup>

14 60. The result of this agreement with Roche, along with Roche's status as majority  
15 shareholder, is that Roche will be able to "fend off any competing offers from other bidders." *Id.*

16 **THE DEFENDANTS HAVE BREACHED THEIR FIDUCIARY DUTIES**

17  
18  
19 <sup>4</sup> The registration statement goes on to state that:

20 "Roche has also agreed that in the event of any merger of Genentech with Roche or its affiliates or sale  
21 of substantially all of our assets to Roche or its affiliates, each unvested option then outstanding under  
22 our stock option plans will either - be accelerated so that each option shall become exercisable  
23 immediately prior to the consummation of the transaction for the full number of shares of common  
24 stock covered by the option; - become exchangeable upon the consummation of the transaction for  
25 deferred cash compensation, which vests on the same schedule as the shares of common stock covered  
26 by the option, having a value equal to the product of (A) the number of shares covered by the option  
and (B) the amount which Roche, in its reasonable judgment, considers to be equivalent in value to the  
consideration per share received by holders of shares of common stock other than Roche in the  
transaction, minus the exercise price per share under the option; or - be canceled in exchange for a  
replacement option to purchase stock of the surviving corporation in the transaction with the terms of  
the option to provide value equivalent, as determined by Roche in its reasonable discretion, to that of  
the canceled option."

27 <sup>5</sup> Wohlsen, Marcus, Genentech mulls Roche offer as stock surges, Associated Press  
28 (July 21, 2008), available at [http://biz.yahoo.com/ap/080721/roche\\_genentech.html?.v=4](http://biz.yahoo.com/ap/080721/roche_genentech.html?.v=4).

1           61. By the acts, transactions, and courses of conduct alleged herein, defendants,  
2 individually and as part of a common plan and scheme and/or aiding and abetting one another in  
3 total disregard of their fiduciary duties, are attempting to deprive plaintiff and the Class of the true  
4 value of their investment in the Company.

5           62. The Proposed Transaction is wrongful, unfair and harmful to Genentech's public  
6 stockholders, the Class members, and represents an attempt by defendants to aggrandize the  
7 personal and financial positions and interests of board members at the expense of and to the  
8 detriment of the stockholders of the Company. The Proposed Transaction will deny plaintiff and  
9 other Class members their rights to share appropriately in the true value of the Company's assets  
10 and future growth in profits and earnings, while usurping the same for the benefit of Roche at an  
11 unfair and inadequate price.

12           63. In light of the foregoing, the Director Defendants have breached their fiduciary  
13 duties to maximize stockholder value and have not fully informed themselves about whether  
14 greater value can be achieved through the sale of the Company to a third party in a manner  
15 designed to obtain the highest possible price for Genentech's public stockholders.

16           64. The Director Defendants' fiduciary obligations under these circumstances require  
17 them to:

18               a. Undertake an appropriate evaluation of Genentech's worth as a merger  
19 candidate or in liquidation;

20               b. Engage in a meaningful auction with third parties in an attempt to obtain the  
21 best value for Genentech's public shareholders;

22               c. Act independently so that the interests of Genentech's public shareholders  
23 will be protected and enhanced;

24               d. Undertake a valuation of the liquid value of Genentech's assets were they to  
25 be disposed of piecemeal in a liquidation auction; and

26               e. Disclose fully and completely all material information during consideration  
27 of the Proposed Transaction.  
28

1           65.     The terms of the Proposed Transaction as now proposed are unfair to the Class, and  
2 the unfairness is compounded by the disparity between the knowledge and information possessed  
3 by the Director Defendants by virtue of their positions of control of Genentech and that possessed  
4 by Genentech's public shareholders.

5           66.     The Director Defendants' failure to immediately reject the facially inadequate  
6 Proposed Transaction evidences their disregard for ensuring that shareholders receive adequate  
7 value for their stock. By failing to reject the Proposed Transaction outright defendants are  
8 artificially depressing the value of Genentech stock, thereby depriving plaintiff and the Class of  
9 the right to receive the maximum value for their shares.

10           67.     Defendants owe fundamental fiduciary obligations to Genentech's stockholders to  
11 take all necessary and appropriate steps to maximize the value of their shares. The Director  
12 Defendants have the responsibility to act independently so that the interests of the Company's  
13 public stockholders will be protected and to consider properly all *bona fide* offers for the  
14 Company and to immediately reject offers that are clearly not in the interest of shareholders, but  
15 instead, have been designed to benefit the Company's majority shareholder. Further, the directors  
16 of Genentech must adequately ensure that no conflict of interest exists between the Director  
17 Defendants' own interests and their fiduciary obligations to maximize stockholder value or, if such  
18 conflicts exist, to ensure that all such conflicts will be resolved in the best interests of the  
19 Company's stockholders. This is especially true where 3 of 7 Company board members are  
20 appointees of Roche.

21           68.     Because the Director Defendants dominate and control the business and corporate  
22 affairs of Genentech and because they are in possession of private corporate information  
23 concerning Genentech's assets, businesses and future prospects, there exists an imbalance and  
24 disparity of knowledge of economic power between defendants and the public stockholders of  
25 Genentech. This discrepancy makes it grossly and inherently unfair for the special committee –  
26 whose identity has not been disclosed to Genentech shareholders – to continue to consider the  
27 Proposed Transaction.

28

1           69. The Director Defendants have breached their fiduciary and other common law  
2 duties owed to plaintiff and other members of the Class in that they have not and are not  
3 exercising independent business judgment and have acted and are acting to the detriment of the  
4 Class.

5           70. Plaintiff seeks preliminary and permanent injunctive relief and declaratory relief  
6 preventing defendants from inequitably and unlawfully depriving plaintiff and the Class of their  
7 rights to realize a full and fair value for their stock at a premium over the market price and to  
8 compel defendants to carry out their fiduciary duties to maximize shareholder value.

9           71. Only through the exercise of this Court's equitable powers can plaintiff and the  
10 Class be fully protected from the immediate and irreparable injury which defendants' actions  
11 threaten to inflict.

12           72. Unless enjoined by the Court, defendants will continue to breach their fiduciary  
13 duties owed to plaintiff and the members of the Class and will not only prevent the sale of  
14 Genentech at a substantial premium, but facilitate the sale at an unfair price to a pre-ordained  
15 buyer, all to the irreparable harm of plaintiff and other members of the Class.

16           73. Plaintiff and the Class have no adequate remedy at law.

17                           **COUNT I**

18                                   **Breach of Fiduciary Duty**

19           74. Plaintiff repeats and realleges all previous allegations as if set forth in full herein.

20           75. By reason of the foregoing, the defendants have breached their fiduciary duties to  
21 plaintiff and the Class under Delaware law or aided and abetted in the breach of those fiduciary  
22 duties. Specifically, defendants have breached their duty of care by failing to consider any  
23 alternative whatsoever for Genentech other than the sale to the Company's largest shareholder  
24 Roche, and have failed to consider selling Genentech to another buyer or having it remain  
25 independent.

26                           **COUNT II**

27                                   **Claim for Aiding and Abetting Breaches of**  
28                                   **Fiduciary Duty Against Defendant Roche**

1           76. Plaintiff incorporates by reference and realleges each and every allegation  
2 contained above, as though fully set forth herein.

3           77. Defendant Roche aided and abetted the Director Defendants in breaching their  
4 fiduciary duties owed to the public shareholders of Genentech, including plaintiff and the  
5 members of the Class.

6           78. The Director Defendants owed to plaintiff and the members of the Class certain  
7 fiduciary duties as fully set out herein.

8           79. By committing the acts alleged herein, the Director Defendants breached their  
9 fiduciary duties owed to plaintiff and the members of the Class.

10           80. Roche colluded in or aided and abetted the Director Defendants' breaches of  
11 fiduciary duties, and was an active and knowing participant in the Director Defendants' breaches  
12 of fiduciary duties owed to plaintiff and the members of the Class.

13           81. Plaintiff and the members of the Class shall be irreparably injured as a direct and  
14 proximate result of the aforementioned acts.

15           **WHEREFORE**, plaintiff demands judgment as follows:

16           a. Declaring that this action is properly maintainable as a class action and  
17 certifying plaintiff as the representative of the Class;

18           b. Preliminarily and permanently enjoining defendants and their counsel,  
19 agents, employees, and all persons acting under, in concert with, or for them, from proceeding  
20 with, consummating, or closing the Proposed Transaction;

21           c. Declaring that the Proposed Transaction is in breach of the fiduciary duties  
22 of the defendants and, therefore, any agreement arising therefrom is unlawful and unenforceable;

23           d. In the event that the Proposed Transaction is consummated, rescinding it  
24 and setting it aside;

25           e. Awarding compensatory damages against defendants, jointly and severally,  
26 in an amount to be determined at trial, together with pre-judgment and post-judgment interest at  
27 the maximum rate allowable by law;

1 f. Requiring the Director Defendants to conduct a fair process to evaluate the  
2 Company's value maximizing strategic alternatives;

3 g. Directing that defendants account to plaintiff and the Class for all damages  
4 caused to them and account for all profits and any special benefits obtained by defendants as a  
5 result of their unlawful conduct;

6 h. Awarding plaintiff and the Class pre- and post-judgment interest at the  
7 statutory rate;

8 i. Enjoining, temporarily and permanently, any material transactions or  
9 changes to Genentech's business and assets unless and until a proper process is conducted to  
10 evaluate Genentech's strategic alternatives;

11 j. Awarding plaintiff his costs and disbursements, including reasonable  
12 allowances for fees of plaintiff's counsel and reimbursement of expenses; and

13 Granting plaintiff and the Class such other and further relief as the Court may deem just  
14 and proper.

15 **JURY TRIAL DEMANDED**

16 Plaintiff demands a trial by jury.

17 DATED: July 23, 2008

18 WOLF HALDENSTEIN ADLER  
19 FREEMAN & HERZ LLP  
20 FRANCIS M. GREGOREK  
21 BETSY C. MANIFOLD  
22 RACHELE R. RICKERT

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Attorneys for Plaintiff

GENENTECH:16219



JS 44 (Rev. 12/07) (cand rev 1-16-08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the local docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

Arnold Wandel, individually and on behalf of all others similarly situated

**DEFENDANTS**

Herbert W. Boyer, Ph.D., William M. Burns, Erich Hunziker, Ph.D., Jonathan K.C. Knowles, Ph.D., Arthur D. Levinson, Ph.D., Debra L. Reed, Charles A. Sanders, M.D., Genentech, Inc., and Roche Holding AG

(b) County of Residence of First Listed Plaintiff  
(EXCEPT IN U.S. PLAINTIFF CASES)

Queens County New York

(c) Attorney's (Firm Name, Address, and Telephone Number)

Betsy C. Manifold  
Wolf Haldenstein Adler Freeman & Herz LLP  
750 B Street, Ste. 2770  
San Diego, CA 92101  
Tel: 619/239-4599 fax: 619/234-4599

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |                                       |                            |   |                            |                                       |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1            | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Security Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<b>IMMIGRATION</b>		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property		<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 USC §1332

Brief description of cause:

Breach of Fiduciary Duty; Aiding and Abetting Breaches of Fiduciary Duty

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)**

(PLACE AND "X" IN ONE BOX ONLY)

☐ SAN FRANCISCO/OAKLAND

☒ SAN JOSE

DATE

07/23/2008

SIGNATURE OF ATTORNEY OF RECORD

*Betsy C. Manifold*

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

Clear Form

AO 440 (Rev. 03/08) Civil Summons (capd 6/08)

## UNITED STATES DISTRICT COURT

for the

NORTHERN DISTRICT OF CALIFORNIA

Arnold Wandel, individually and on behalf of all  
others similarly situated

Plaintiff

v.

Civil Action No.

Herbert W. Boyer, Ph.D., William M. Burns,  
Erich Hunziker, Ph.D., Jonathan K.C. Knowles,  
Ph.D., Arthur D. Levinson, Ph.D., Debra L. Reed,  
Charles A. Sanders, M.D., Genentech, Inc., and Roche Holding AG

Defendant

## Summons in a Civil Action

To: Herbert W. Boyer, Ph.D., William M. Burns, Erich  
Hunziker, Ph.D., Jonathan K.C. Knowles, Ph.D.,  
Arthur D. Levinson, Ph.D., Debra L. Reed, Charles  
A. Sanders, M.D., Genentech, Inc., and Roche Holding AG

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

Betsy C. Manifold  
Wolf Haldenstein Adler Freeman & Herz LLP  
750 B Street, Ste. 2770  
San Diego, CA 92101

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Richard W. Wieking

Name of clerk of court

Date: \_\_\_\_\_

Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

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**Proof of Service**

I declare under penalty of perjury that I served the summons and complaint in this case on \_\_\_\_\_,  
by:

(1) personally delivering a copy of each to the individual at this place, \_\_\_\_\_; or

(2) leaving a copy of each at the individual's dwelling or usual place of abode with \_\_\_\_\_  
who resides there and is of suitable age and discretion; or

(3) delivering a copy of each to an agent authorized by appointment or by law to receive it whose name is  
\_\_\_\_\_; or

(4) returning the summons unexecuted to the court clerk on \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
Server's signature

\_\_\_\_\_  
Printed name and title

\_\_\_\_\_  
Server's address